

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Judgment delivered on : 29th February 2016

+ BAIL APPLN. 2779/2015
ARVIND AZAD

..... Petitioner

Through: Mr.Ashok Drall and Mr. Vikas Azad,
Advocates

versus

THE STATE (NCT OF DELHI)

..... Respondent

Through: Mr. Kamal Kumar Ghei, Additional
Public Prosecutor for the State with
Inspector Om Parkash, Police Station
Khayala, Delhi

CORAM:
HON'BLE MR. JUSTICE P.S.TEJI
JUDGMENT

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P.S. TEJI, J.

1. Petitioner seeks bail in an offence registered as FIR No. 57/2011 under Section 302/364/365/202/201 of Indian Penal Code (hereinafter referred to as the IPC) at Police Station Khayala, Delhi by filing the present bail application under Section 439 of Code of Criminal Procedure, 1973 (hereinafter referred to as the Cr. P.C.).

2. The present case was registered on the statement of one Harbir Singh, who stated in his statement that his son – Vijay Solanki was a Government School teacher at Chand Nagar, B-2, Second Shift. On 01.04.2011, at about 4.15 PM, he had received a call from Arvind

Azad (the petitioner herein) from the mobile phone of his son stating that Vijay (deceased herein) is not well and they had gone for check up to Park Hospital and now his health is fit and he is taking him back to his house. Thereafter, as per the contents of FIR, the complainant asked him to meet at District Centre, Janakpur. The complainant reached the spot and waited there till 6.30 PM but nobody turned up. Thereafter, two colleagues namely Rakesh and Vikas Kumar reached the spot and told the complainant that in the Car No.DL-9C-J-7347 Maruti 800, white color, the petitioner had taken his son from Park Hospital. It was further informed by them that they were also inclined to be sit with them in the car but the petitioner suddenly drove the car before they could be seated in the car. They also informed that a party was organized in the school and the deceased did not take any food but had taken only juice which was given by Arvind, the petitioner herein and after taking the juice, the health of Vijay deteriorated. They also tried to call the petitioner at mobile No.9911555411 and also called at the phone of Vijay at 9211378005 but there was no response. Thereafter, it is recorded in the FIR that they visited the residence of Arvind Azad but could not find him.

3. The investigation was conducted and prima facie a case under Section 365 IPC was made out, therefore the FIR was registered. The petitioner was arrested on 17.04.2011 and since then the petitioner is in custody.

4. Mr. Ashok Drall, counsel for the petitioner contended that the petitioner has been arrested in this case merely on the basis of

suspicion raised by the complainant. On 02.04.2011 at about 2.00 AM, the uncle of Vijay Solanki came to the Police Station and informed that they had got a telephonic message from PP Kharawar PS, Sampla Distt. Rohtak, Haryana, regarding a dead body lying on the road side and the same had been identified as the dead body of Vijay. It was also alleged that the applicant poured petrol over the body of Vijay and set him ablaze.

5. Counsel for the petitioner further contended that petitioner is falsely implicated in the present case by the complainant with the connivance of police as the deceased and his uncle – Rambir had played a fraud upon the applicant, as the family members of the deceased knew the misdeeds committed by them with applicant in the property dealings laid suspicion upon the petitioner.

6. Counsel for the petitioner further contended that the FSL report falsifies the story of the prosecution as no poison has been detected in the report. Besides this, the chemical analysis does not disclose any trace of petroleum products and elements. It is further contended that since the present case is purely based on circumstantial evidence and the time gap between the last see and discovery of dead body is of such nature in which no one can rule out the involvement of other persons and assume the involvement of the accused only.

7. The last contention made on behalf of the petitioner is that the petitioner in custody since 17.4.2011; charge sheet has been filed; the present case is based on circumstantial evidence; there is no eye-

witness to the incident and only 20 witnesses out of 50 prosecution witnesses, including the public witnesses, have been examined and the remaining prosecution evidence would take time, therefore the petitioner ought to be granted bail in the present case.

8. Mr. Kamal Kumar Ghei, learned Additional Public Prosecutor appearing on behalf of the State vehemently opposed the contention of counsel for the petitioner and submitted that efforts were made to trace the deceased as well as the petitioner herein and ultimately on 17.04.2011 the petitioner was arrested. Status report has also been filed on behalf of the State, in which it is submitted that during interrogation, the petitioner had disclosed about his involvement in the commission of crime and also got recovered personal belongings of the deceased. It is only thereafter, Sections 365/302/201 of IPC were added. Charge sheet has been filed and the matter is pending trial before the Court of Sessions.

9. I have heard the submissions of counsel appearing on behalf of both the sides and gone through the material placed on record.

10. After careful scrutiny of the case, this Court observes that victim was the teacher in Govt. school, in which the petitioner was also a teacher. The petitioner organized a party; the petitioner gave juice to the victim the petitioner took the victim to hospital and the petitioner called the father of the victim (complainant herein) from his son's mobile on 1.4.2011 at 4.15 PM informing the complainant that he will be reaching alongwith his son at District Centre, Janakpuri, but

did not reach.

11. There are two independent witnesses, i.e., colleagues of the deceased – Rakesh and Vikas Kumar who informed the complainant that the petitioner had organized a party and the deceased had taken some juice given by the petitioner herein and only thereafter, the health of victim deteriorated. Thereafter, he was taken to Park Hospital by the petitioner himself in Car No.DL-9C-J-7347 Maruti 800, white color. This Court also observes that there is recovery of personal belongings of the victim including his PAN Card, Identity Card, Shoes and purse at the instance of the petitioner herein.

12. After going through the contents of the petition as well as FIR, statement of witnesses recorded in the present case, and the material placed before this Court observes that the charge sheet has been filed in this case and evidence is being recorded. This court is of the conscious view that the present case is based on circumstantial evidence and the prosecution has to complete the chain of circumstances which could indicate the guilt of the accused only. Though the evidence is not concluded but this Court cannot ignore the fact that the deceased was last seen with the petitioner, who took the deceased in Car No.DL-9C-J-7347 Maruti 800, white color, from the Park Hospital and other colleagues – Rakesh and Vikas Kumar were also inclined to in the car alongwith the deceased. This Court also does not lose sight of the fact that there is recovery of PAN Card, Identity Card, Shoes and purse at the instance of the petitioner herein.

13. In view of the aforesaid observations and in the facts and circumstances of the present case, this Court is not inclined to grant bail to the petitioner – Arvind Azad, at this stage. Accordingly, the bail application filed by the petitioner is hereby dismissed.

14. It is made clear that any observations made hereinabove, shall not have any bearing on the merits of the case.

FEBRUARY 29, 2016
pkb

P.S.TEJI, J

